

### **33. AUDIT REQUIREMENTS**

In the event that the Contractor provides services on other than a fixed fee for services basis, the Contractor shall maintain books, records, documents, and other evidence pertaining to the administrative costs and expenses of the Contract to the extent and in such detail as shall properly reflect all revenues, all net costs, direct and apportioned, and other costs and expenses of whatever nature as relating to such services. The Contractor's accounting procedures and practices shall conform to Generally Accepted Accounting Principles (GAAP) and the costs properly applicable to the Contract shall be readily ascertainable therefrom.

For work to be performed on an hourly reimbursement rate or cost reimbursement basis, the allowability of direct and indirect costs shall be governed by 7 CFR, Subpart 227.17.

### **34. AUDIT LIABILITIES**

In addition to, and not in any way in limitation of the obligation of the Contract, it is understood and agreed by the Contractor that the Contractor shall be held liable for any Government or federal audit exceptions arising from the fault or negligence of the Contractor, provided that the Contractor is given the opportunity to cure the cause of the exceptions. If such exceptions are not cured pursuant to the terms of the Contract, the Contractor shall be liable for the direct damages caused to Government as a result of such failure to cure.

### **35. TAXES**

The Government is not required to pay taxes of any nature, however if Contractor is required to pay sales, use, value-added, or other federal, Government, or local taxes including USVI gross receipts taxes, based on the licenses or services provided in this Contract, **except taxes based on Contractor's income or property tax for**

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**software**, then such taxes shall be billed to and paid by the Government upon evidence of payment by Contractor.

To support the Internal Revenue Service Information reporting requirements, the EBT contractor must ensure they are in compliance with the Department of Treasury – Internal Revenue Service reporting outlined in 26 CFR Parts 1, 31 and 301. The final regulation implemented section 6050W and related statutory changes enacted by the Housing Assistance Tax Act of 2008 that require payment settlement organizations to report payments settled for credit, debit and EBT cards each calendar year. The EBT contractor must create and distribute IRS-1099 forms to EBT-only retailers and third party processors (TPP) that perform more than 200 transactions totaling \$20,000 or more during any calendar year.

### **36. SEVERABILITY**

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the Terms and Conditions of this Contract are declared severable.

### **37. LOBBYING CERTIFICATION**

Section 1352 of Title 31 of the U.S. Code requires that funds appropriated to a federal agency be subject to a requirement that any federal Contractor or grantee (such as the Government) must be required to certify that no federal funds will be used to lobby or influence a federal officer or member of Congress. The certification the Government has been required to sign provides that the language of this certification (shall) be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and Contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall verify and disclose accordingly. The certification also requires the completion of federal lobbying reports and the imposition of a civil penalty of \$10,000 to \$100,000 for failing to make a required report. As a sub-recipient, the Contractor understands and agrees to the federal requirements for certification and disclosure.

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### **38. COVER**

If, in the reasonable judgment of the Government, a default by the Contractor is not so substantial as to require termination, reasonable efforts to induce the Contractor to cure the default are unavailing, and the default is capable of being cured by the Government or by another Contractor without unduly interfering with continued performance by the Contractor, the Government, upon written notification to Contractor with ample time to cure, may provide or procure the services reasonably necessary to cure the default, in which event the Contractor shall reimburse the Government for the any costs in excess of the Contractor fees for such services.

### **39. OFFER OF GRATUITIES OR KICKBACKS**

It is a crime and breach of ethical standards for a payment, gratuity, or offer of employment to be made by or on behalf of a Contractor or Material subcontractor to any USVI officials, employees or agents involved in this project. The Government may terminate any Contract if it is determined that gratuities of any kind were offered/received by any officials, employees, or agents of the Virgin Islands by the Contractor.

### **40. FORCE MAJEURE**

The Contractor shall not be liable for any damages if the failure to perform the Contract arises out of causes without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, telecommunications outages and unusually severe weather; but in every case the failure to perform must be without the fault or negligence of either the Contractor or its Material Subcontractor(s). When such a cause arises, the Contractor shall notify the Government immediately in writing of its failure to perform, describing the cause of failure and how it affects performance, and the anticipated duration of the inability to perform.

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#### **41. LIQUIDATED DAMAGES**

The Contractor and the Government agree that time is of the essence in the performance of this Contract. The Government and the Contractor agree that in the event of a failure to meet the standards defined within the time set forth in the approved Project Work Plan and Service Level Agreement, damage shall be sustained by the Government and that it is and will be impractical and extremely difficult to ascertain and determine the actual damages which the Government will sustain by reason of such failure. The parties agree that the Project Work Plan and the Service Level Agreement will establish the baseline documents for measuring Contractor performance. It is therefore agreed that the Government may require the Contractor to pay liquidated damages for such failures according to the following paragraphs.

The Contractor shall be liable for liquidated damages, as mutually agreed in this Contract, that are directly caused by an action or omission by the Contractor. The Contractor shall not be liable for liquidated damages for events that are directly caused by the failure of the Government, another contractor of the Government, a third party not under the control of Contractor, any other Government agency, or a force majeure event.

To ensure the timely completion of the Project Work Plan including the tasks, deliverables and services provided hereunder the Government understands that reasonably prompt answers and decisions are necessary. The Government commits to use its best efforts in answering or responding to Contractors information requests and/or feedback within five (5) work days unless agreed otherwise. Failure to respond during such Terms, exempts Contractor from any related liability.

For any failure by the Contractor to meet any staffing assignment, timeliness, performance standard, documentation, work product or deliverable date as specified in this Subsection, the Government may require the Contractor to pay liquidated damages, as mutually agreed in this Contract, per work day per timeliness, performance standard, documentation or deliverable for each and every day thereafter until such staffing

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assignment, timeliness, performance standard, documentation or deliverable is completed and accepted is corrected and approved by the Government.

Written notification of failure to meet a staffing assignment, timeliness, performance standard, documentation, work product or deliverable may be given by the EBT Project Manager to the Contractor. The Contractor shall have thirty (30) workdays or other mutually agreed period from the date of receipt of written notification of a failure to correct the failure set forth in the written notification. If the failure is not resolved within this period, liquidated damages may be imposed retroactively to the date of expected delivery.

During the contract period the Contractor is required to comply with a staffing assignment, timeliness, performance standards, and documentation, work product or deliverable standards as defined in project work plans and the Service Level Agreement. The Vendor may be assessed five hundred dollars (\$500.00) for each workday or any part thereof, for which the Vendor is not materially in compliance with the Project Work Plan and such non compliance is due solely to the action or inaction of Vendor. Assessments, if any, for failure to meet any agreed to Service Level shall be specified in the Service Level Agreement included as Addendum III to this Agreement.

#### **42. CONTRACTOR PERSONNEL**

The Government believes that the Contractor must commit a cohesive, dedicated, highly skilled core team to the EBT Project. Personnel commitments are a mandatory requirement for the work to be performed under this Contract. However, it is recognized that diversions of personnel may occur either for reasons within the control of the Contractor or for reasons beyond the control of the Contractor. In either case, the diverted personnel shall be replaced by equally trained personnel, by the Contractor, in a timely manner, acceptable by the Government.

Prior to military re-deployment or upon personnel leaving for just cause, the Contractor shall submit to the EBT Project Manager resumes of proposed substitutes in

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sufficient detail to permit evaluation of the impact on the EBT notification of such and to permit the EBT Project Manager and the Contractor to agree on a substitute. Just cause is defined as death, serious illness, promotion, resignation, termination, or military recall. Replacement of such personnel, if approved, shall be with personnel of equal or greater ability and qualifications.

During the course of the Contract, the Government reserves the right to require, for good cause, the Contractor to reassign or otherwise remove from the project any employee or Material Subcontractor employees found unacceptable by the Government, provided that such request will be based solely on nondiscriminatory reasons and Contractor shall have the right to request the withdrawal of any such request upon a showing that the request is not warranted based upon performance of the employee or Material Subcontractor employee.

#### **43. FAILURE TO PERFORM**

In the event Contractor has failed to perform any substantial obligation under this agreement, the Government may withhold monies due and payable to the Contractor for the particular task Contractor failed to perform, without penalty, until such failure is cured or otherwise adjudicated, provided such failure to perform directly results from the Contractor's sole or substantial negligence.

#### **44. NONDISCRIMINATION**

No person shall be excluded from participating in, be denied the proceeds of, or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, national origin or handicap.

#### **45. CONFLICT OF INTEREST**

- (a) Contractor covenants that it (includes owners' partners, directors, and/or officers) has no interest and will not acquire any interest, direct or indirect, which would

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conflict in any manner or degree with the performance of services required to be performed under this Contract.

(b) Contractor further covenants that it is:

- (1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or
- (2) a territorial officer or employee and, as such, has:
  - (i) familiarized himself/herself with the provisions of Title 3, Chapter 37, Virgin Islands Code, pertaining to conflicts of interests, including the penalties provision set forth in Section 1108 thereof;
  - (ii) not made, negotiated or influenced this contract, in (his/her) official capacity;
  - (iii) no financial interest in the contract as that term is defined in Section 1101, (1) of the V. I. Code.

#### 46. NOTICE

Any notice required to be given by the terms of this Contract shall be deemed to have been given when the same is sent certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

**GOVERNMENT:** GOVERNMENT OF THE VIRGIN ISLANDS  
**Department of Human Services**  
**1303 Hospital Ground, Suite 1**  
St. Thomas, U.S. Virgin Islands 00802  
**Attention: Richard Lacombe – EBT Project Manager**  
Telephone: (340) 774-0930 x4111

**cc:** Government of the Virgin Islands  
**Department of Property and Procurement**  
No. 1 Sub Base, Third Floor  
St. Thomas, U.S. Virgin Islands 00802  
**Attention: Commissioner**  
Telephone: (340) 774-0828

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**CONTRACTOR:** **Fidelity Information Services, LLC.**  
11000 W Lake Park Drive  
Milwaukee, WI 53244  
**Attention: Naveen Nukala**  
Line of Business Executive  
FIS- Government Solutions Division  
Telephone: (414) 815- 1447

**cc:** **Fidelity Information Services, LLC**  
**Attention: Chief Legal Officer**  
601 Riverside Ave.  
Jacksonville, FL 32204

Either party may change its address for notification purposes by giving written notice of the change and setting forth the new address and an effective date.

#### **47. LICENSES, PERMITS and INSURANCE**

- 1) Contractor covenants that it has obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code; and it has familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations. The Contractor shall also provide the Government with proof of a valid Virgin Islands business license and/or permit for itself and/or each agent performing services under this Contract.
- 2) The Contractor shall furnish to the Government a certificate(s) evidencing that required insurance is in effect, for the policy amounts, and applicable policy numbers and expiration dates, within thirty (30) calendar days of Contract signing and prior to beginning any work under this contract. In the event of cancellation of any insurance coverage, the Contractor shall immediately notify the Government of such cancellation. The Contractor will be required to obtain suitable replacement coverage within thirty (30) calendar days of the cancellation.

The Government, at its option, may impose a stop work order on the Contractor

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until such replacement coverage is secured and approved by the Government. If a stop work order is imposed, the Government shall not be liable for any costs or lost profits incurred by the Contractor.

- 3) For performance under this Contract, the Contractor also must provide proof of worker's compensation coverage, and meet the requirements identified for corporations. Within thirty (30) calendar days after award, Contractor must submit a copy of their certificate proving that the Contractor and his agents are covered by Worker's Compensation Employee's Liability.
- 4) The Contractor shall provide the Government with copies of their Articles of Incorporation and a certificate of a resolution which authorizes the FIS representation to sign the Contract.
- 5) The Contractor may insure any portion of the risk assumed under the provisions of this Contract based upon the Contractor's ability (size and financial reserves included) to survive a series of adverse experiences, including withholding of payment by the Government, or imposition of penalties by the Government. Express prior written approval of the Government is required for any proposed program of self-insurance.
- 6) A Contract will not be executed with any firm to perform work with the Government of the Virgin Islands until evidence is submitted that said firm has a valid Virgin Islands Business License to do business in the Virgin Islands. The selected Contractor must submit hard copy of a valid Virgin Islands business license within thirty (30) calendar days after award.

#### **48. FALSE CLAIMS**

Contractor warrants that, to the best of its knowledge, it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing

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such claim to be false, fictitious, or fraudulent. Contractor acknowledges that knowingly making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

#### **49. NOTICE OF FEDERAL FUNDING**

Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds.

#### **50. DEBARMENT CERTIFICATION**

By execution of this Contract, the Contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its sub-contracts for Material Subcontractors hereunder and shall furnish its Material Subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON-PROCUREMENT."

In the event the Contractor or Material Subcontractors misrepresents its eligibility to receive contract awards using federal funds, the Contractor or Material Subcontractors agrees that it shall not be entitled to payment for any work performed under this Contract or sub-contract, as applicable, and that the Contractor or Material Subcontractors shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made. If, during the term of this Contract, the Contractor shall become ineligible to receive contract awards using federal funds, this Contract shall be terminated forthwith for cause and the Contractor shall not be entitled to payment for any work performed under this Contract or Material Subcontractors after the effective date of such ineligibility.

#### **51. PUBLICITY**

No publicity, including press releases, interviews, bulletins, or articles in any public, private or trade medium concerning this Contract, its terms, execution, implementation, or results, can be released without prior written approval of the Government.

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## 52. OTHER PROVISIONS

*Addendums I (Scope of Services), II (Terms of Compensation), III (Service Level Agreement)*, and attached to this Contract are incorporated into and made a part of this Contract.

## 53. ORDER OF PRECEDENCE

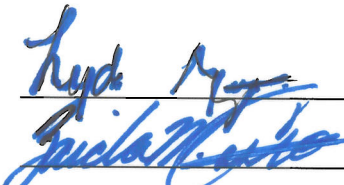
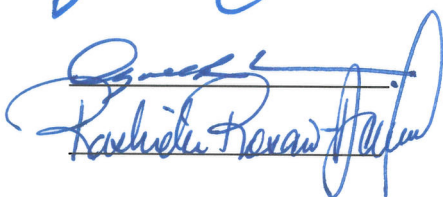
In the event of any inconsistency in or conflict among the document elements of this Contract identified in this Article, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:


1. Federal Standards;
2. Any Amendment to this Contract;
3. This Contract including all Addenda, which are incorporated herein;
4. The Proposal submitted by the Contractor in response to the RFQ;
5. The RFQ Addenda; and
6. The RFQ.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year above written.


### WITNESSES:

### GOVERNMENT OF THE VIRGIN ISLANDS

  
Felecia L. Blyden, Commissioner  
Department of Human Services

  
8/3/17  
Date



  
Lloyd T. Bough, Jr., Commissioner  
Department of Property and Procurement

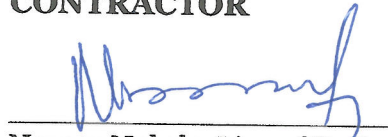
  
8/16/17  
Date

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**CONTRACTOR**

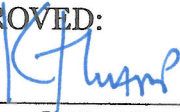


Naveen Nukala, Line of Business Executive  
Fidelity Information Services, LLC  
(Corporate seal, if Contractor is a corporation)

7/27/2017

Date

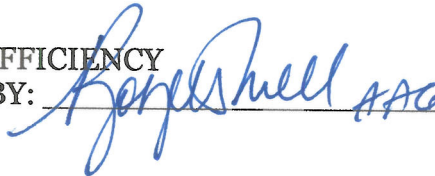
APPROVED:



Date: 9-29-17

**Kenneth E. Mapp**  
GOVERNOR OF THE VIRGIN ISLANDS

APPROVED AS TO LEGAL SUFFICIENCY  
DEPARTMENT OF JUSTICE BY:



Date

9/28/17

**CERTIFICATE OF APPROVAL**

I hereby certify that this is a  
true and exact copy of Contract No. \_\_\_\_\_  
entered into between the Department of Property and Procurement and  
Fidelity Information Services, LLC.

**Lloyd T. Bough, Jr., Commissioner**  
Department of Property and Procurement

Contract No. P037DIHSC17  
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Contractor's Initial: Ny

**CONTRACTOR**

\_\_\_\_\_  
\_\_\_\_\_



Naveen Nukala, Line of Business Executive  
Fidelity Information Services, LLC  
(Corporate seal, if Contractor is a corporation)

07/27/2017  
Date

APPROVED:

\_\_\_\_\_  
**Kenneth E. Mapp**  
GOVERNOR OF THE VIRGIN ISLANDS

Date: \_\_\_\_\_

APPROVED AS TO LEGAL SUFFICIENCY  
DEPARTMENT OF JUSTICE BY: \_\_\_\_\_ Date \_\_\_\_\_

**CERTIFICATE OF APPROVAL**

I hereby certify that this is a  
true and exact copy of Contract No. \_\_\_\_\_  
entered into between the Department of Property and Procurement and  
Fidelity Information Services, LLC.

\_\_\_\_\_  
**Lloyd T. Bough, Jr., Commissioner**  
Department of Property and Procurement

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